

the termination of the settlement negotiation is subject to review by, appeal to, or rehearing by the presiding officer or the Commission.

(c) *Availability of parties' attorneys or representatives.* The presiding officer (or Settlement Judge) may require that the attorney or other representative who is expected to try the case for each party be present and that the parties, or agents having full settlement authority, also be present or available by telephone.

(d) *Admissibility in subsequent hearing.* No evidence, statements, or conduct in settlement negotiations under this section will be admissible in any subsequent hearing, except by stipulation of the parties. Documents disclosed may not be used in litigation unless obtained through appropriate discovery or subpoena.

(e) *Imposition of additional requirements.* The presiding officer (or Settlement Judge) may impose on the parties and persons having an interest in the outcome of the adjudication additional requirements as the presiding officer (or Settlement Judge) finds necessary for the fair and efficient resolution of the case.

(f) *Effects of ongoing settlement negotiations.* The conduct of settlement negotiations does not divest the presiding officer of jurisdiction and does not automatically stay the proceeding. A hearing must not be unduly delayed because of the conduct of settlement negotiations.

(g) *Form.* A settlement must be in the form of a proposed settlement agreement, a consent order, and a motion for its entry that includes the reasons why it should be accepted. It must be signed by the consenting parties or their authorized representatives.

(h) *Content of settlement agreement.* The proposed settlement agreement must contain the following:

(1) An admission of all jurisdictional facts;

(2) An express waiver of further procedural steps before the presiding officer, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise to contest the validity of the consent order;

(3) A statement that the order has the same force and effect as an order made after full hearing; and

(4) A statement that matters identified in the agreement, required to be adjudicated have been resolved by the proposed settlement agreement and consent order.

(i) *Approval of settlement agreement.* Following issuance of a notice of hearing, a settlement must be approved by the presiding officer or the Commission as appropriate in order to be binding in the proceeding. The presiding officer or Commission may order the adjudication of the issues that the presiding officer or Commission finds is required in the public interest to dispose of the proceeding. In an enforcement proceeding under subpart B of this part, the presiding officer shall accord due weight to the position of the NRC staff when reviewing the settlement. If approved, the terms of the settlement or compromise must be embodied in a decision or order. Settlements approved by a presiding officer are subject to the Commission's review in accordance with § 2.341.

§ 2.339 Expedited decisionmaking procedure.

(a) The presiding officer may determine a proceeding by an order after the conclusion of a hearing without issuing an initial decision, when:

(1) All parties stipulate that the initial decision may be omitted and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

(2) No unresolved substantial issue of fact, law, or discretion remains, and the record clearly warrants granting the relief requested; and

(3) The presiding officer finds that dispensing with the issuance of the initial decision is in the public interest.

(b) An order entered under paragraph (a) of this section is subject to review by the Commission on its own motion within forty (40) days after its date.

(c) An initial decision may be made effective immediately, subject to review by the Commission on its own motion within thirty (30) days after its date, except as otherwise provided in this chapter, when:

(1) All parties stipulate that the initial decision may be made effective immediately and waive their rights to file a petition for review, to request oral argument, and to seek judicial review;

(2) No unresolved substantial issue of fact, law, or discretion remains and the record clearly warrants granting the relief requested; and

(3) The presiding officer finds that it is in the public interest to make the initial decision effective immediately.

(d) The provisions of this section do not apply to an initial decision directing the issuance of a limited work authorization under 10 CFR 50.10, an early site permit under subpart A of part 52 of this chapter, a construction permit or construction authorization, a combined license under subpart C of part 52 of this chapter, or a manufacturing license under subpart F of part 52.

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§ 2.340 Initial decision in certain contested proceedings; immediate effectiveness of initial decisions; issuance of authorizations, permits, and licenses.

(a) *Initial decision—production or utilization facility operating license.* (1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties. In any initial decision in a contested proceeding on an application for an operating license or renewed license (including an amendment to or renewal of an operating license or renewed license) for a production or utilization facility, the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties and any matter designated by the Commission to be decided by the presiding officer. The presiding officer shall also make findings of fact and conclusions of law on any matter not put into controversy by the parties, but only to the extent that the presiding officer determines that a serious safety, environmental, or common defense and security matter exists, and the Commission approves of an examination of and decision on the matter upon its referral by the presiding officer under, *inter alia*, the provisions of §§ 2.323 and 2.341.

(2) *Presiding officer initial decision and issuance of permit or license.* (i) In a contested proceeding for the initial issuance or renewal of a construction permit, operating license, or renewed license, or the amendment of an operating or renewed license where the NRC has not made a determination of no significant hazards consideration, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate, after making the requisite findings, shall issue, deny, or appropriately condition the permit or license in accordance with the presiding officer's initial decision once that decision becomes effective.

(ii) In a contested proceeding for the amendment of a construction permit, operating license, or renewed license where the NRC has made a determination of no significant hazards consideration, the Commission, the Director, Office of Nuclear Reactor Regulation, or the Director, Office of New Reactors, as appropriate (appropriate official), after making the requisite findings and complying with any applicable provisions of § 2.1202(a) or § 2.1403(a), may issue the amendment before the presiding officer's initial decision becomes effective. Once the presiding officer's initial decision becomes effective, the appropriate official shall take action with respect to that amendment in accordance with the initial decision. If the presiding officer's initial decision becomes effective before the appropriate official issues the amendment, then the appropriate official, after making the requisite findings, shall issue, deny, or appropriately condition the amendment in accordance with the presiding officer's initial decision.

(b) *Initial decision—combined license under 10 CFR part 52.* (1) Matters in controversy; presiding officer consideration of matters not put in controversy by parties. In any initial decision in a contested proceeding on an application for a combined license under part 52 of this chapter (including an amendment to or renewal of combined license), the presiding officer shall make findings of fact and conclusions of law on the matters put into controversy by the parties and any matter designated by the